
UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

RICHARD CRUZ,

Plaintiff,

versus

DERICK WILSON, *et al.*,

Defendants.

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CIVIL ACTION NO. 1:04-CV-305

MEMORANDUM OPINION AND ORDER

Plaintiff Richard Cruz, an inmate confined at the federal prison in Beaumont, Texas, proceeding *pro se*, brought this civil action against Derick Wilson and the United States of America. The magistrate judge entered two reports recommending that the case be dismissed. Having received no objections, the Court adopted the reports and recommendations. A final judgment was entered on March 7, 2006.

On March 14, 2006, plaintiff filed a motion for relief from judgment pursuant to Federal Rule of Civil Procedure 60(b). Because the motion was filed within ten days of the judgment, it has been liberally construed as a motion to alter or amend judgment pursuant to Federal Rule of Civil Procedure 59(e). *See Shepherd v. International Paper Co.*, 372 F.3d 326, 328 n.1 (5th Cir. 2004).

Plaintiff asserts that he was unable to file objections because he did not receive copies of the reports and recommendations. Thus, plaintiff requested that the case be reopened so that he could file objections. Plaintiff subsequently filed objections to the magistrate judge's reports and recommendations.

After due consideration, the Court is of the opinion that the motion to alter or amend judgment should be granted. The judgment should be vacated, and plaintiff's objections should receive a *de novo* review.

The Court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). After careful consideration, the Court concludes the objections are without merit. Plaintiff's retaliation claim is insufficient to withstand a motion for summary judgment because plaintiff failed to produce direct evidence of motivation, or to allege a chronology of events from which retaliation may be inferred. *See Allen v. Thomas*, 388 F.3d 147, 149 (5th Cir. 2004). It is accordingly

ORDERED that plaintiff's motion to alter or amend judgment is **GRANTED**. The memorandum order and final judgment entered on March 7, 2006 are **VACATED**. It is further

ORDERED that plaintiff's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered in accordance with the magistrate judge's recommendations.

SIGNED at Beaumont, Texas, this 2nd day of October, 2006.



MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE